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No. 923

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

DOROTHY E. BRIDGES ..... Appellant

vs.

CITY OF BILOXI, MISSISSIPPI ..... Appellee

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MOTION TO DISMISS

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No._____

DOROTHY E. BRIDGES_____Appellant

vs.

CITY OF BILOXI, MISSISSIPPI_____Appellee

MOTION TO DISMISS

The appellee, City of Biloxi, Mississippi, moves the Court to dismiss the appeal filed herein upon the ground that the appellant poses no substantial question under the United States Constitution and there is no necessity for further argument or proceedings in this Court.

I.

THE STATUTES INVOLVED

The appellant questions the validity of the Mississippi statutes providing for the extension of municipal boundaries by the annexation of unincorporated territory. These statutes, Section 3374.04, and 3374.10 through 3374.13, Mississippi Code Annotated (1942), Recompiled, are recited in full in the appellee's Jurisdictional Statement (Appendix "G", "H", "I", "J" and "N").

Section 3374.10 provides that the governing authorities of a municipality desiring to enlarge its boundaries shall pass an ordinance defining with certainty the territory which is proposed to be annexed and also defining the municipality boundaries as they will exist following an-

nexation. It also requires that the ordinance describe in general terms the services and improvements to be rendered in the territory to be annexed and the approximate time within which same shall be accomplished, No contention is made that the requirements of this statute were not met.

Sections 3374.11 and 3374.12 set forth the procedures required following adoption of the annexation ordinance. A petition is filed in the Chancery Court in the county in which the municipality is located asking ratification and approval of the ordinance. The Chancellor then fixes a date certain for a hearing upon the petition and notice thereof is given in the manner and for the time provided in Section 3374.04. (Publication of Notice for three consecutive weeks, and the posting of notice in three or more public places in the territory to be annexed.)

Finally, Section 3374.13 provides that the Chancellor, after the hearing on the petition, shall enter a decree based upon the evidence in which he shall find whether or not the proposed annexation is reasonable and required by the public convenience and necessity. This section sets forth further that the decree shall become effective ten days following the date thereof or ten days from the final determination of an appeal thereon.

II.

THE PROCEEDINGS BELOW

The appellee, City of Biloxi, Mississippi, on May 3, 1962, adopted the ordinance required by statute enlarging the boundaries of the city and petitioned the Chancery Court of Harrison County, Mississippi for ratification and confirmation of the ordinance. The Chancellor fixed the date for the hearing upon the petition and notice was

given as provided by Section 3374.12 and 3374.04, Mississippi Code Annotated (1942), Recompiled.

The appellant at page 11 of her Jurisdictional Statement maintains that she had no notice nor privilege of protest. To the contrary, notice was given as provided for by statute and a number of objectors, including the appellant, appeared and filed written objections. These objections were heard and the appellant actually testified at the hearing before the Chancery Court of Harrison County, Mississippi.

Following the hearing, the ordinance of the City of Biloxi was ratified and confirmed by the Chancellor (Appellant's Jurisdictional Statement, Appendix "B", pages 21-29). This decree was affirmed by the Supreme Court of Mississippi on October 4, 1965 (Dorothy E. Bridges v. City of Biloxi, Mississippi, 178 So. 2d 683, Appendix "C" to Appellant's Jurisdictional Statement, pages 31-40).

The judgment of the Supreme Court of Mississippi found that the matter had been fully heard, that the evidence substantiated the decree of the Chancellor, that the appellee had fully complied with the law and that the evidence wholly justified the annexation.

The appellant, in her Jurisdictional Statement, suggests that this is a class case. Such a suggestion has never previously been made in this case. A proceeding does not fall within the category of a class action merely because one of the parties says that it does. On the other hand, it must meet specific and well defined qualifications set forth in Rule 23, Federal Rules of Civil Procedure.

At pages 6 and 7 of her Jurisdictional Statement, the appellant maintains that the depravation of her consti-

tutional rights was timely raised and that the appellee has attempted to mislead the Court in this regard. To this appellee takes exception. The appellant, together with others, filed Objections to the Ratification, Approval and Confirmation of the Biloxi Annexation Ordinance (see Appendix "A" hereto). These objections were filed on June 25, 1962 which was the final day for the filing of such objections under the notice issued from the Chancery Court of Harrison County, Mississippi in accordance with Section 3374.04, Mississippi Code Annotated (1942) Recompiled. It will be noted that these objections (Appendix "A") raised *no* constitutional question.

III.

ARGUMENT

The Case Presents No Substantial Questions Not Previously Decided by This Court

This Court, in numerous cases, has announced the rule that territory may be annexed by or consolidated into a city without the consent and even against remonstrance of the inhabitants of the annexed area, and there is no depravation of property without due process of law by reason of additional tax burdens falling upon those annexed. *Hunter v. City of Pittsburgh,* 207 U.S. 161, 28 S. Ct. 40, 52 L. Ed 151; *United States v. Memphis,* 97 U.S. 284, 24 L. Ed. 937; *Kelly v. Pittsburgh,* 104 U.S. 78, 26 L. Ed 658.

In *Hunter v. Pittsburgh, supra,* there was concerned a Pennsylvania Act authorizing the consolidation of two cities upon the majority vote of the electors in the combined cities. The electors of the cities of Pittsburgh and Allegheny voted in favor of the consolidation even though a majority of the votes cast in the smaller city of Alle-

gheny opposed it. Citizens of Allegheny objected and contended that the Pennsylvania Act was unconstitutional in that it deprived them of their property without due process of law.

This Court rejected their contentions and affirmed the State Court saying in part:

> "We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme,

and its legislative body, conforming its action to the State Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it."

In the case at bar, the Supreme Court of Mississippi, in its opinion affirmed the Decree of the Chancery Court of Harrison County, Mississippi and disposed of the contention of the appellant that she will be denied due process and equal protection of law because her property will be subject to taxation to pay general obligation bonds issued by the City of Biloxi, Mississippi before the annexation ordinance was passed;

"Objectors contend that they will be denied due process and equal protection of the law under the Mississippi and United States Constitutions because their property will be subject to taxation to pay general obligation bonds issued by the City of Biloxi before the annexation ordinance was passed. This contention is not supported by reason or authority. If this were the law it would be practically impossible to annex territory to a municipality. Most municipalities have existing general obligation bonded indebtednesses which are serviced and retired from tax proceeds. The cases cited by objectors in support of this argument

are not persuasive. Barnes v. Kansas City, 359 Mo. 519, 222 S.W. 2d 756 (1949), 10 A.L.R. 2d 553 (1950), holds that property brought into a municipality by annexation is subject to taxation to discharge municipal indebtedness previously incurred and existing at the time of annexation. There is no statute in this state exempting residents of annexed areas from paying taxes for general municipal purposes. *They are required to share in the burdens and obligations as well as the benefits common to all citizens of the city.''* Dorothy E. Bridges v. City of Biloxi, Mississippi, 178 So. 2d, 683 (page 685-686) (Emphasis added)

In an attempt to support her novel theory that the Mississippi statutes regarding annexation by municipalities is unconstitutional and permits unlawful discrmination and the taking of property without due process, the appellant cites a number of cases, none of which afford her any assistance.

Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed 2d 663 concerns the violation of the Fourteenth Amendment by reason of the apportionment of representation in the Tennessee Legislature. In that case there was an alleged impairment of voting rights. No such question arises in this case. Every resident of the territory sought to be annexed by the appellee was given notice and given an opportunity to be heard in the Chancery Court of Harrison County, Mississippi before that court determined the reasonableness of the ordinance of annexation and before it determined whether such annexation was required by public convenience and necessity. Due process of law does not hinge upon the franchise.

The appellant cites *Yick Wo v. Hopkins,* 118 U.S. 365, 6 S. Ct. 1064, 30 L. Ed 220; *Dean Milk Co. v. City of*

Madison, 340 U.S. 349, 71 S. Ct. 295, 95 L. Ed 329; and *Boynton v. Virginia,* 364 U.S. 454, 81 S. Ct. 182, 5 L. Ed 2d 206. Each of these cases involves the alleged discriminatory application or enforcement of a state statute or city ordinance. There exists in this action nothing to suggest that the annexation statutes of the State of Mississippi have been applied discriminately and the appellant has never previously hinted of such. All of the cases in this regard which are cited by the appellant in support of her contentions resolve themselves to alleged arbitrary action by state or municipal authorities. However, neither the appellant nor any objector, has ever contended that the municipal authorities of the City of Biloxi, in passing the annexation ordinance, acted arbitrarily or for purposes of discrimination. Furthermore, the Chancery Court of Harrison County, Mississippi reviewed the actions of the municipal authorities, confirmed and ratified such actions and the Supreme Court of Mississippi, in turn, affirmed all previous actions.

The appellant seems comforted by the decisions in *Mount Pleasant v. Beckwith,* 100 U.S. 514, 25 L. Ed 699, *Morgan v. Beloit,* 74 U.S. 619, 19 L. Ed 203, *United States v. Memphis, supra,* and *Laramie County v. Albany County,* 92 U.S. 307, 23 L. Ed 552. These cases offer her no solace. *Mount Pleasant v. Beckwith, supra,* concerns legislative dissolution of a municipal corporation and the division of its territory between two other municipalities. This Court held that the surviving municipalities succeeded to the public property of the dissolved city and became liable for its previously incurred obligations. Appellee takes no exception to this.

Morgan v. Beloit, supra, involves the effect upon judgments of an old municipal corporation whose charter had been called and replaced by another charter. The Court

held that equitable principles were involved in that case and that there was no adequate remedy at law.

In *United States v. Memphis, supra,* the City of Memphis annexed a certain territory after having entered into a contract for the paving of city streets, none of which were in the annexed territory. The Tennessee Legislature exempted the residents of the annexed territory from taxation for the payment of any part of the debts of the city incurred for paving prior to the annexation. The Court held that the act exempting the residents of the annexed territory from such taxation was valid and stated:

> "Had the Act of 1869 never been passed, it must be conceded they would have been on an exact equality with all of the owners of property in the City, equally entitled with them to all municipal rights and privileges, and equally subject to all municipal burdens and charges."

Again, in *Laramie County v. Albany County, supra,* this Court announced the same general rule. There it was held that a legislature may divide counties and towns and may apportion the common property and the common debts; however, in the absence of such apportionment the municipality or county owns the public property within its limits and is responsible for all debts contracted before the act of separation.

The case of *City of Gulfport, Mississippi v. Todd,* 92 Miss. 428, 46 So. 541, is certainly no support for the appellant. That case said only, that, by annexation, a municipality may not change the date upon which property must exist within the municipal boundaries for assessment and tax purposes.

All remaining cases cited by the appellant hold no possible application to the case at bar. The appellant has recited no authority to sustain her claim that imposing liability for pre-existing debts upon the territory which has been annexed violates any provision of the United States Constitution. In point of fact, the decided cases by this Court hold and demand the opposite conclusion.

IV.

CONCLUSION

Appellee, City of Biloxi, Mississippi, respectfully submits that the questions upon which a decision in this cause rely are so unsubstantial and frivolous as to require no further argument and respectfully moves the Court to dismiss this appeal.

Respectfully submitted,

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and

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By: L. Arnold Pyle

Counsel for Appellee,
CITY OF BILOXI, MISSISSIPPI

CERTIFICATE OF SERVICE

I, L. Arnold Pyle, one of the attorneys for the appellee, City of Biloxi, Mississippi, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have this day served printed copies of the foregoing Motion to Dismiss on the appellant in the following manner:

1. By mailing two (2) printed copies thereof in a duly addressed envelope with first class postage prepaid, to Honorable Upton Sisson, 1913-15th Street, Gulfport, Mississippi, one of the attorneys of record for the appellant; and

2. By mailing two (2) printed copies of said motion in a duly addressed envelope, with first class postage prepaid to Honorable Forrest B. Jackson, Post Office Box 124, Jackson, Mississippi, one of the attorneys of record for the appellant.

I further certify that I have this day mailed by first class mail, postage prepaid, forty (40) printed copies thereof to the Clerk, United States Supreme Court, Washington, D. C. 20530.

This the 10th day of February, 1966.

L. Arnold Pyle

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One of the Attorneys for Appellee,
City of Biloxi, Mississippi

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APPENDIX "A"

IN THE CHANCERY COURT
OF HARRISON COUNTY, MISSISSIPPI
JULY 1962 TERM

No. 45,112

IN THE MATTER OF THE EXTENSION
OF THE BOUNDARIES OF THE CITY
OF BILOXI, MISSISSIPPI

OBJECTIONS TO THE RATIFICATION,
APPROVAL AND CONFIRMATION OF
BILOXI ORDINANCE NO. 1035,
EXTENDING THE BOUNDARIES OF
THE CITY OF BILOXI, MISSISSIPPI

Come now C. T. SWITZER, W. T. BRADY, JOHN W. ATKINSON, ADRIAN WEILL, ALFRED H. KRUSE, PEARL WALTERS, GLENN P. HUFFSTETTER, N. J. BITTAR, A. B. POWELL, by and through their attorneys of record, UPTON SISSON and JOEL BLASS, and joined in by numerous other persons whose signatures are hereto affixed, all of whom are interested in, affected by and objecting to the ratification, approval and confirmation of Ordinance No. 1035 of the City of Biloxi, extending its boundaries and enlarging the corporate area as proposed by said Ordinance and as set forth in the amended petition filed by the City of Biloxi herein, and in support of their said objections, would respectfully show unto the Court as follows, to-wit:

1.

That public convenience and necessity does not require the proposed annexation by the City of Biloxi.

2.

That the proposed annexation by the City of Biloxi is unreasonable, uneconomical and detrimental to the residents of the area proposed to be annexed and particularly to these objectors.

3.

That the City of Biloxi cannot economically, or feasibly provide the services it proposes by said Ordinance.

4.

That the people living within the area proposed to be annexed by the City of Biloxi are culturally, economically and socially more closely connected with each other than with the City of Biloxi.

5.

That the area proposed to be annexed by the City of Biloxi is included within the boundaries of an area proposed to be incorporated as Beauvoir, Mississippi, as reflected by the Petition on file in Cause No. 43,614 on the docket of the Chancery Court of Harrison County, Mississippi, which said Cause was filed on the 4th day of March, 1961, and the same was pending in this Court on March 6, 1962, being the date of the filing of the original petition for ratification, approval and confirmation of an ordinance extending and enlarging the boundaries of the City of Biloxi, Mississippi, as well as May 4, 1962, being the filing date of the amended petition herein for the ratification, approval and confirmation of Ordinance No. 1035; that the City of Biloxi was, therefore, without

authority of law to enact an ordinance to annex an area while a petition for the incorporation of the identical area, or practically the identical area, was on file and pending in the Chancery Court of Harrison County, Mississippi, and, therefore, the said Ordinance No. 1035 of the City of Biloxi is and was void and a nullity.

6.

That a portion of the area sought to be annexed by the City of Biloxi is and was, on the date of the filing of the petition herein, included within the boundaries of an area sought to be annexed by the City of Gulfport in Cause No. 45,143, said Petition for Ratification, Approval and Confirmation of an Ordinance of the City of Gulfport, having been filed by the City of Gulfport on March 12, 1962.

7.

And for other causes to be shown on the hearing hereof.

Respectfully submitted.

C. T. Switzer
William T. Brady
N. J. Bittar
Adrian Weill
Alfred H. Kruse
Pearl M. Walters
Glen P. Huffstetter

END